

California Regional Water Quality Control Board
Santa Ana Region

April 4, 2003

ITEM: 22

SUBJECT: Administrative Civil Liability Complaint No. R8-2003-0026,
Wildwood Canyon Country Estates LLC, Yucaipa, San Bernardino
County

BACKGROUND

On February 19, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0026 (copy attached) to Wildwood Canyon Estates LLC (Wildwood Canyon) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$35,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Wildwood Canyon.

ACL No. R8-2003-0026 was issued by the Executive Officer to Wildwood Canyon for failure to develop and implement an effective Storm Water Pollution Prevention Plan, and for discharging storm water containing pollutants to waters of the United States from its construction site.

DISCUSSION

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$700), with the State Water Resources Control Board. Wildwood Canyon filed a NOI and obtained coverage under the General Permit, WDID No. 836S316752. Wildwood Canyon's 38-acre construction site is located at the northwest corner of Wildwood Canyon Road and Holmes Street in the City of Yucaipa.

On November 26, 2002, Board staff conducted a routine inspection of the construction site. During the inspection, Board staff observed that best management practices (BMPs) implemented to control the discharge of pollutants from the site were not adequate. A significant amount of soil erosion was noted on

the slopes, apparently from the previous storm event. Deteriorated and ineffectively placed sandbags were also observed. Inadequate BMP implementation and maintenance contributed to the discharge of sediments to the local storm drain. The construction superintendent, Mr. Ron Butts, was not available at the site during the inspection.

Wildwood Canyon had not implemented the BMPs specified in the SWPPP. General Note (4) on Exhibit A of the SWPPP states, "Erosion control as defined herein shall consist of temporary soil stabilization measures on grades/disturbed areas, placement of gravel bag velocity reducers and straw bale barriers, and other such temporary measures to control erosion". None of the site stabilization measures were implemented at the southern slopes of the property. Previous rain events had caused heavy erosion, as evidenced by rills and deep gullies on the slopes.

On November 27, 2002, Board staff talked to Mr. David Cooper, construction manager for Wildwood Canyon, and informed him that the BMPs at the site were not adequate and that an effective combination of erosion and sediment controls was needed.

On December 12, 2002, a Notice of Violation was sent to Wildwood Canyon outlining the aforementioned violations and requiring Wildwood Canyon to stabilize all disturbed slopes by implementing appropriate erosion control measures to prevent any further migration of pollutants to the storm drain systems.

On December 16, 2002, Board staff re-inspected the site during a rain event and observed sediment-laden discharge from the site into the storm drain system. Loose dirt and mud were observed on all internal streets. The few sandbags installed at the site were overwhelmed with sediment, and sediment-laden storm water was bypassing the sandbags. The construction superintendent was not on site during the inspection.

On December 17, 2002, Board staff again visited the site to evaluate the condition of the BMPs after the storm event. All chevrons were full of sediments. The few sandbags placed around the storm drain catch basin inlets were misplaced. There were big gaps between sandbags that allowed sediment discharge into the storm drain. Graded slopes were not stabilized nor protected from soil erosion. Lack of BMP maintenance and inadequate implementation of BMPs allowed sediment-laden discharge to enter the storm drain system and ultimately to the receiving waters.

On December 17, 2002, staff again contacted Mr. David Cooper and discussed the site conditions, including the ineffective BMPs, at the site. He was informed of the ineffective control measures and how these measures had failed to control the discharge of pollutants from the site. He was further requested to stabilize all

exposed slope areas to prevent soil and sediment from leaving the construction site. He was also requested to implement an effective combination of erosion and sediment controls on all disturbed areas.

On December 27, 2002, Regional Board staff received a letter from Mr. David Cooper stating that they had placed additional sandbags to protect the slopes and to control silt and mud. The letter further indicated that the southerly slopes were protected. A copy of the SWPPP was also provided. Staff's review of the SWPPP revealed that it was deficient. Some of the deficiencies included inadequate erosion control measures, lack of sediment tracking controls, inadequate program for inspection and maintenance of BMPs, lack of training documentation, and absence of a monitoring program.

On January 6, 2003, Board staff visited the site to evaluate site conditions, including any improvements to BMP implementation. Staff did not observe any significant improvements in the implementation of BMPs. The construction superintendent was contacted at that time, and staff once again explained the need for an effective combination of sediment/erosion control measures to minimize erosion and to control sediment discharges.

On January 8, 2003, Board staff again observed sediment-laden storm water discharges from the construction site. There were no significant improvements in the implementation of BMPs. A significant amount of sediment-laden storm water discharge was observed from a number of locations within the construction site flowing into the local storm drain system. The sediment control BMPs were not adequate to control the pollutants resulting from soil erosion.

The facility was repeatedly warned of the need for improvements to its erosion and sediment controls. Its failure to develop and implement appropriate BMPs and its failure to maintain and upgrade BMPs contributed to the discharge of sediments into the storm drain system during most storm events in December 2002, January 2003 and February 2003.

Even after repeated staff requests to improve the site conditions, Wildwood Canyon failed to implement proper BMPs and continued to discharge sediment-laden storm water to the storm drain systems in violation of the General Permit. Consequently, the Executive Officer issued ACL No. R8-2003-0026 on February 19, 2003.

Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

Wildwood Canyon is alleged to have violated Provisions A.3 and C.2 of the General Permit. Wildwood Canyon violated C.2 by failing to properly develop and implement an effective SWPPP and violated A.3 by discharging sediment-laden storm water to waters of the U.S. from the construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations. The maximum potential liability for these violations is \$ 8.95 million (see the attached ACL for details).

Section 13385(e) of the Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

Nature, Circumstances, Extent and Gravity of Violation

By submitting the NOI, the discharger certified that it would comply with the provisions of the General Permit, including the development and implementation of a SWPPP and a Monitoring Program.

The discharger failed to develop and implement an effective and site-specific SWPPP and monitoring program. The SWPPP did not specify appropriate BMPs for erosion and sediment controls. Some of the soil stabilization measures specified in the facility's SWPPP were not implemented. The limited pollution control measures implemented at the site were not properly constructed and/or maintained. Because of these factors, the facility repeatedly discharged sediment-laden storm water from the site. The storm drains in the area discharge into Wildwood Creek.

Wildwood Canyon received repeated written and oral requests for corrective measures at the site from Board staff.

Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would not have the ability to pay the proposed assessment.

Prior History of Violations

The City's inspection records indicate that Wildwood Canyon was in violation of local ordinances, and the City ordered Wildwood Canyon to come into compliance as early as October 14, 2002. Board staff issued a Notice of Violation on December 12, 2003 for several violations of the General Permit, including lack of a SWPPP and inadequate implementation of BMPs. Despite the Notice of Violation and several oral warnings, Wildwood Canyon was not in compliance during subsequent inspections of the site on January 6, 2003, January 8, 2003, February 13, 2003 and February 25, 2003.

Degree of Culpability

The discharger violated the Clean Water Act and the California Water Code by discharging storm water containing pollutants and by not complying with the terms and conditions of the General Permit by failing to develop and implement an effective site-specific SWPPP and Monitoring Program. Despite repeated requests to upgrade erosion control measures at the site, the discharger did not implement adequate erosion control BMPs and continued to discharge polluted storm water into waters of the U.S. Wildwood Canyon ignored repeated written and oral warnings from the City and Board staff.

Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively develop a SWPPP and implement BMPs, Wildwood Canyon gained an economic advantage over its competitors. Economic savings from these violations are estimated as follows:

Wildwood Canyon saved approximately \$30,494 by not implementing adequate BMPs for slope protection at the site during the current rainy season (based on 7 acres of slopes @ \$.10/ sqft).

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$35,000, specified in the Administrative Civil Liability Complaint issued by the Executive Officer on February 19, 2003.

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2003-026
)	for
Wildwood Canyon Country Estates, LLC)	Administrative Civil Liability
1535 South D Street, Suite 200)	
San Bernardino, CA 92408)	
)	
<u>Attn: David Cooper</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Wildwood Canyon Country Estates, LLC (Wildwood) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on April 4, 2003, at the Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga. Wildwood or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Wildwood is alleged to have violated Provisions A.3 ("Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.") and C.2 ("All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.") of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Wildwood failed to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and discharged storm water containing pollutants to waters of the United States from its construction site. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.
5. Runoff from the Wildwood construction site (Tract 15548) in the City of Yucaipa is regulated under the State's General Permit, WDID No. 8 36S316752.

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6. This complaint is based on the following facts:

- a. On November 26, 2002, Board staff conducted a routine inspection of the construction site located at the northwest corner of Wildwood Canyon Road and Holmes Street, in the City of Yucaipa. During the inspection, Board staff observed that best management practices (BMPs) implemented to control the discharge of pollutants from the site were not adequate. A significant amount of soil erosion from the previous storm event was observed on all slopes. Deteriorated and ineffectively placed sandbags were also observed. Inadequate BMP implementation and maintenance resulted in the discharge of sediments to the local storm drain. Mr. Ron Butts, the construction superintendent was not available at the site during the inspection.
- b. The site had not implemented the BMPs specified in the SWPPP. General Note (4) on Exhibit A of the SWPPP states, "Erosion control as defined herein shall consist of temporary soil stabilization measures on grades/disturbed areas, placement of gravel bag velocity reducers and straw bale barriers, and other such temporary measures to control erosion". None of the site stabilization measures were implemented at the southern slopes of the property. Previous rain events had caused heavy erosion as evidenced by rills and deep gullies on the slopes.
- c. On November 27, 2002, Board staff talked to Mr. David Cooper, Wildwood construction manager, to inform him that the BMPs were not adequate and that an effective combination of erosion and sediment controls was needed.
- d. On December 12, 2002, a Notice of Violation was sent to Wildwood outlining the aforementioned violations and the requirement to prevent any further migration of pollutants to the storm drain systems.
- e. On December 16, 2002, Board staff re-inspected the site during a rain event and observed sediment-laden discharge from the site into the storm drain system. Loose dirt and mud were observed on all internal streets. The few sandbags installed at the site were overwhelmed with sediment and sediment-laden storm water, which was bypassing the sandbags. The construction superintendent was not on site during the inspection.
- f. On December 17, 2002, Board staff again visited the site to evaluate the condition of the BMPs after the storm event. All chevrons were full of sediments. The few sandbags placed around the storm drain catch basin inlets were misplaced. There were big gaps between sandbags that allowed sediment discharge into the storm drain. Lack of BMP maintenance and inadequate implementation of BMPs allowed sediment-laden discharge to enter the storm drain system and ultimately to the receiving waters.
- g. On December 17, 2002, staff contacted Mr. David Cooper and discussed the site conditions, including the ineffective BMPs, at the site. He was informed that the control measures were ineffective and failed to control

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pollutants on site. He was further requested to stabilize all exposed slope areas to retain soil and sediment from leaving the construction site. He was also requested to implement an effective combination of erosion and sediment control on all disturbed areas.

- h. On December 27, 2002, Regional Board staff received a letter from Mr. David Cooper stating that they had placed additional sandbags to protect the slopes and to control silt and mud. A copy of the SWPPP was also provided. Staff's review revealed that the SWPPP was deficient. Some of the deficiencies include inadequate erosion control measures, lack of sediment tracking controls, inadequate program for inspection and maintenance of BMPs, lack of training documentation, and absence of a monitoring program.
 - i. On January 6, 2003, Board staff visited the site to evaluate site conditions. Staff did not observe any improvements in the implementation of BMPs. The construction superintendent was contacted at that time, and staff once again explained the need for an effective combination of sediment/erosion control measures to minimize erosion and to control sediment discharges.
 - j. On January 8, 2003, Board staff again observed sediment-laden storm water discharged from the construction site. There were no significant improvements in the implementation of BMPs. A significant amount of sediment-laden storm water discharge was observed from a number of locations within the construction site flowing into the local storm drain system. The sediment control BMPs were not adequate to control the pollutants resulting from soil erosion.
 - k. The facility was repeatedly warned of the need for improvements to its erosion and sediment controls. Its failure to develop and implement appropriate BMPs and its failure to maintain and upgrade BMPs caused discharge of sediments into the storm drain system during most storm events in December 2002 and January 2003.
- 7. Wildwood Canyon is alleged to have violated Provision A.3 and C.2 of the General Permit.
 - 8. Wildwood violated the General Permit by failing to develop and properly implement an effective SWPPP. Wildwood also violated the General Permit by discharging storm water containing pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
 - 9. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

10. The sediment-laden storm water discharged to the storm drain system from the site was estimated to be at least 894,000 gallons.
11. Pursuant to Section 13385(c), the total maximum assessment for which Wildwood is civilly liable is \$8.95 million based on \$20,000 (\$10,000 per day for 2 days of violation observed by staff) plus \$8.93 million based on estimated discharge (0.894 million gallon -1,000 = 0.893 million gallons @\$10 per gallon) for the violations cited in Paragraph 8, above.
12. Wildwood saved approximately \$30,494 by not implementing adequate BMPs at the site (7 acres of slopes @ \$.10/sqft). Board staff costs for investigating this incident were approximately \$2,100 (30 hours at \$70/hour). These factors were considered in assessing the penalty proposed in Paragraph 13, below.
13. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>Soil stabilization measures specified in the SWPPP were not implemented. Due to facility's lack of adequate best management practices (BMPs) implementation, sediment-laden storm water discharges occurred periodically and entered the storm drain system. Photos taken and a sample collected at the site indicated muddy water discharge. Sediment-laden storm water was observed entering the storm drain. The storm drain discharges into Wildwood Canyon Creek.</p> <p>Wildwood ignored repeated written and oral requests for corrective measures at the site.</p> <p>Wildwood's inaction and failure to upgrade the BMPs at the site and failure to provide adequate employee training and oversight of its operations led to inadequate BMP implementation and caused pollutants to be discharged into the waters of the US.</p>

February 19, 2003

B. Culpability	The discharger violated the terms of the General Permit by failing to properly implement an inspection program to monitor the effectiveness of the BMPs. Despite repeated requests to upgrade erosion control measures at the site, the discharger did not implement adequate erosion control BMPs and continued to discharge polluted storm water into the storm drain system. Wildwood has not been responsive to Regional Board staff's efforts to bring the site into compliance. A Notice of Violation was issued by Board staff on December 12, 2002 for several violations of the General Permit including lack of a SWPPP and inadequate implementation of BMPs.
C. Economic Benefit or Savings	Wildwood saved approximately \$30,494 by not implementing adequate BMPs for slope protection at the site during the current rainy season.
D. Prior History of Violations	Despite the Notice of Violation and several oral requests, Wildwood was not in compliance during four subsequent inspections of the site including during the rain event on January 08, 2003.
E. Staff Costs	Regional Board staff spent approximately 30 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$2100).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

14. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on Wildwood in the amount of \$35,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Wildwood may waive its right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order for \$35,000 and the bottom portion of the invoice to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ms. Milasol C. Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238, or contact the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

2-19-03
Date


Gerard J. Thibeault
Executive Officer

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Complaint No. R8-2003-0026
for
Administrative Civil Liability

for Wildwood Canyon Country Estates, LLC

Invoice Date: 02/14/2003
Enforcement Action ID: 67247
Enforcement Order No.: R8-2003-0026